

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LEROY COLLINS,

Plaintiff,

vs.

**Case No.: 2:12-cv-1093
JUDGE SMITH
Magistrate Judge Deavers**

**WARDEN, LONDON CORRECTIONAL
INSTITUTION, et al.,**

Defendants.

ORDER

On April 23, 2014, the United States Magistrate Judge issued a *Report and Recommendation* recommending that Defendants' Motion for Summary Judgment be **GRANTED** and that judgment be entered in favor of Defendants; and that Plaintiff's Motion for Summary Judgment be **DENIED**. (*See* Doc. 46).

The parties were advised of their right to object to the *Report and Recommendation*. This matter is now before the Court on Plaintiff's Motion to Dismiss and Defendants' Response to that Motion. (*See* Docs. 48 and 49). In so far as Plaintiff's arguments are construed as objections to the Report and Recommendation, the Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Plaintiff, in response to the Report and Recommendation, filed what is titled a Motion to Dismiss, requesting dismissal, but also arguing that he disagrees with the Magistrate Judge's

decision to deny his Motion for Summary Judgment. Defendants argue, and the Court agrees, that Plaintiff's Motion to Dismiss is more properly characterized as an objection to the Magistrate's Report and Recommendation. This case has been pending since November of 2012, numerous motions have been filed and adjudicated, including the most recent motions for summary judgment. A voluntary dismiss pursuant to Rule 41(a)(1)(A) is not proper, nor does the Court find that dismissal pursuant to Rule 41(a)(2) is proper. Plaintiff is merely trying to avoid final adjudication on the merits of his case and dismissal with prejudice, by filing a motion to dismiss.

Plaintiff's objections, however, merely present the arguments and issues presented to and considered by the Magistrate Judge in the *Report and Recommendation*. For the reasons stated in the *Report and Recommendation*, this Court finds that the objections are without merit.

The *Report and Recommendation*, Document 46, is **ADOPTED** and **AFFIRMED**. Plaintiff's Motion for Summary Judgment is **DENIED**. Defendants' Motion for Summary Judgment is **GRANTED**. Further, Plaintiff's Motion to Dismiss is **DENIED**.

The Clerk shall remove Documents 28, 35, 46, and 48 from the Court's pending motions list. The Clerk shall enter final judgment in favor of Defendants.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT